



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

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Terence Kouts
Corporations
Australian Securities and Investments Commission (ASIC)
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Sydney NSW 2001

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Dear Mr Kouts

Submission on Consultation Paper 257 - Improving disclosure of historical financial information in prospectuses: Update to RG 228

We welcome the opportunity to provide feedback on Consultation Paper 257 Improving disclosure of historical financial information in prospectuses: Update to RG 228 (CP 257) and we support ASIC's aim to assist companies and their advisers to better understand their disclosure obligations and to improve the quality of historical financial information disclosure.

We are supportive of all measures designed to improve the quality of information provided in prospectuses. However, we also believe there is a balance to be struck between the provision of relevant and reliable information to potential investors and the encouragement of innovation and investment in the Australian economy. We accept the achievement of the proper balance between innovation and information needs is challenging but maintain that the balance is best achieved by retaining the flexibility proffered by the principles led approach as set out in s710 of the Corporations Act.

From a practical perspective many will welcome the clarification and codification of ASIC's requirements. Providing guidance on ASIC's expectations will help prospective issuers and their advisers plan offers with a clearer understanding of those expectations. It may also help to reduce the number of stop orders issued by ASIC resulting in offers being delayed or abandoned. However we reiterate that the flexibility envisaged by the Corporations Act needs to be maintained so that the costs of providing information do not outweigh the benefits to potential investors. The information provided must remain relevant to investors in light of the specific circumstances of each issuer.

With this in mind we have highlighted some more challenging areas that warrant further consideration . These areas are in respect of the requirement to provide audited historical financial statements for two-and-a-half or three years for both the issuer and any business it acquires and the proposal to treat financial information as unaudited where an audit or review opinion in a prospectus has a qualification or modification. Our detailed comments are set out in the attached appendix.

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The Appendix (attached) provides responses to the specific proposals raised in CP 257. If you have any questions regarding this submission, please contact Ceri-Ann (Acting Reporting Leader) via email; ceri-ann.ross@charteredaccountantsanz.com

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Ward', written in a cursive style.

Rob Ward AM FCA
Head of Leadership and Advocacy

Appendix

B1 We propose to clarify that subject to the circumstances described in proposals B11-B13, an issuer should disclose audited historical financial statements for two and a half or three years for both the issuer and any business it acquires. This is regardless of whether the financial statements were required by law to be produced (apart from being in the prospectus) or whether the business is in a corporate form: see draft RG 228.88

B1Q1 Do you have any comments on this proposed clarification?

We note the discussion in CP 257 as to the complex financial histories possessed by many issuers and that they may not reflect operations that the issuer currently controls (or will control). We agree that historical financial information may not be relevant in these cases. While we do find the examples provided useful it may be more helpful to formulate a more comprehensive principle of where the financial statements of the legal issuer **do** provide a realistic portrayal of the operations that the issuer controlled or will control.

B1Q4 Do you have any feedback on the related examples in Case Studies 1-7 and 11 in Section C?

Our feedback is in respect of the following examples:

Case study 1: Acquisitions using IPO funding

We appreciate that if the target companies were themselves raising funds via a prospectus they would be expected to provide RG 228 compliant historical financial information. However for the acquiring company to obtain financial records of the target companies it assumes the acquisition is on friendly and exclusive terms. This is not always the case and the circumstances of the proposed IPO may therefore prevent the offer from proceeding.

Case study 2 – Roll ups

In circumstances where multiple businesses in the same sector are acquired the immaterial businesses are rarely structured or set up to be audited. Obtaining historical audited financial information may be difficult, time consuming and prohibitively expensive.

B2 We propose to clarify that where an audit or review opinion (for half-year financial information) included in a prospectus has a qualification or modification that indicates that the audit opinion provides limited independent assurance for investors, we are likely to treat the financial information as effectively unaudited. In the event we treat the information as unaudited, it is likely that we will view the prospectus as not complying with the s710 test: see draft RG 228.92

B2Q1 Do you have any comments on this proposed clarification?

This proposal depends on the interpretation of a qualification or modification that indicates that the audit opinion provides limited independent assurance for investors. Qualifications and modifications of the audit opinion can occur in all sorts of circumstances. How would prospective issuers decide that the audit opinion provides limited independent assurance for

investors? An audit opinion may have been qualified 3 years ago because of insufficient appropriate audit evidence pertaining to the market valuation of an investment property. At the time of IPO however the property has long been sold. This qualification is not relevant to the current situation. Again we would recommend a more comprehensive principle of when audit qualifications or modifications would be treated as unaudited information.

B2 Do you have any feedback on the related examples in Case studies 8-9 in Section C

Both opinions are disclaimers in case studies 8 &9 while the proposal puts forward qualifications or modifications. Does this mean that qualified audit opinions would be accepted?